

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000650

FILED: _____

STATE OF ARIZONA

GERALD R GRANT

v.

RAYMOND KENNEY

RAYMOND KENNEY
PO BOX 3732
PINETOP AZ 85935-0000

GILA BEND JUSTICE COURT
REMAND DESK CR-CCC

RULING
AFFIRM/REMAND

GILA BEND JUSTICE COURT

Cit. No. #948243

Charge: A. SPEED IN EXCESS OF 86 MPH

DOB: 05-21-1947

DOC: 04-15-2001

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on January 29, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Gila Bend Justice Court, the Gila Bend Justice Court file, and the Memorandum submitted by Appellant.

Appellant was found guilty after a trial of the criminal traffic violation (class 3 misdemeanor offense) of Speed in Excess of 86 mph, in violation of A.R.S. 28-701.02(A)(3). Appellant was fined \$168.00 and has filed a timely Notice of Appeal in this case. First, Appellant claims that he was denied a pretrial conference with the prosecutor. However, as the trial judge patiently explained to Appellant, there is no right to a pretrial conference and Appellant had not requested one. A brief pretrial conference with the object of attempting to negotiate a plea agreement was held just prior to trial. Appellant does not allege any prejudice as a result of this pretrial conference immediately before trial.

Appellant also claims that the trial court erred in denying his motion to continue the trial. Generally, motions to continue are directed to the discretion of a trial judge. It is not the role of an appellate judge to second-guess the trial court's ruling on a motion to continue, but to review the trial court's decision for an abuse of discretion.¹ There was no apparent abuse of discretion in this case. The record reveals that there had been two previous continuances granted at Appellant's request. Appellant claims prejudice because he did not realize that it was a criminal charge pending; however, Appellant was given a copy of the traffic citation which clearly indicates that the offense was a criminal traffic matter. The fact that Appellant lost that original citation does not affect the fact that he was provided notice that this was a criminal traffic case. This Court finds no error in the denial of Appellant's motion to continue the trial.

¹ State v. Barreras, 181 Ariz. 516, 892 P.2d 852 (1995).

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Appellant also contends that he was denied his right of counsel. Though not specifically stated by the Appellant, this Court understands the Appellant's claim to be a denial of his alleged right to appointed counsel. The record is devoid of any evidence that Appellant is or was indigent. Arizona Rules of Criminal Procedure, Rule 6.1(b) provides:

An indigent defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceeding which may result in punishment by loss of liberty and in any other criminal proceeding in which the Court concludes that the interests of justice so require (emphasis added).

The law at the federal level is clear. The United States Supreme Court has held that an indigent defendant charged with shoplifting was not entitled to appointed counsel even though the possible sentencing range was up to one year imprisonment, but imprisonment was not imposed in that case.² There are no authorities holding that Arizona has standards that exceed the federal standards regarding appointment of counsel.³

Division 2 of the Arizona Court of Appeals has held that a defendant is not entitled to a court-appointed attorney where the defendant was charged with shoplifting, a class 1 misdemeanor offense, but the prosecutor avowed before trial that no jail time would be requested by the State, and the City Court judge ruled that no jail time would be imposed.⁴

In the instant case, Appellant was not sentenced to any term of imprisonment. Appellant was fined \$168.00. Therefore, Appellant was not entitled to a court-appointed attorney and the trial court did not err in refusing his request.

² Scott v. Illinois, 440 U.S. 367, 99 S.Ct 1158, 59 L.Ed.2d 383 (1979).

³ Campa v. Fleming, 134 Ariz. 330, 656 P.2d 619 (App. 1982).

⁴ Id.

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Appellant also alleges that several due process rights were denied by the trial judge as well as violations of other constitutional rights. This Court has review the record and found no violations of Appellant's due process or constitutional rights. However, construing Appellant's last two arguments as a challenge to the sufficiency of the evidence to warrant his conviction, this Court has reviewed the sufficiency of the evidence which was presented against Appellant. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁵ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inference will be resolved against the Defendant.⁶ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁷ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁸ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁹ The Arizona Supreme Court has explained in State v. Tison¹⁰ that "substantial evidence" means:

⁵ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁶ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁷ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁸ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P.490 (1889).

⁹ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

¹⁰ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.¹¹

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of guilt and the sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Gila Bend Justice Court for further and future proceedings in this case.

¹¹ Id. at 553, 633 P.2d at 362.
Docket Code 512